IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1444 (S/S) of 2005

Smt. Sushma Upadhyay,
Wife of Sri Arun Kumar Upadhyay,
Presently posted as Assistant Teacher,
Primary School Shashradhara, Block – Raipur,
District- Dehradun.

……Petitioner.

V e r s u s.

1. State of Uttaranchal through the Director of Education, Uttaranchal Shashan, Dehradun.
2. District Education Officer, Dehradun.
3. Additional District Education Officer (Basic), Dehradun, District – Dehradun.

……..Respondents.

Hon'ble M.M. Ghilidyal, J.:

Heard Sri H.M. Raturi, learned counsel for the petitioner and learned standing counsel for the State of Uttaranchal on behalf of respondents.

Learned counsel for the both the parties are agreed to decide the writ petition at its admission stage itself.

By means of this writ petition, the petitioner has challenged the order dated 30.06.2005 passed by District Education Officer, Dehradun, transferring the petitioner, who is working as Assistant Teacher in Primary School, Shashdhara, Block – Raipur, District – Dehradun to Primary School, Fulait, Block – Raipur on the ground of over stay.

The petitioner has challenged the impugned transfer order on two grounds. Firstly, at present the

petitioner has attained the age of 55 years and as per Government Order of the State Government of Uttaranchal the teachers, who have attained the age of 55 years should not be transferred. Of course, the Government Order does not have statutory force and the provision made in the Government Order are only guidelines even then it is expected from the employer to follow the guidelines framed by the government while transferring the employees. Secondly, that there is report of Board of Doctors regarding ailment of the petitioner and the petitioner was found suffering from backbone disc disorder and as such, she is unable to walk. The petitioner was also examined at Doon, MRI, Scan Centre, Dehradun, who has reported as under:

"Multi level disc degeneration, moderate posterior mediolateral disc extrusion and bilateral facet arthopathy causing secondary spinal stenosis at L4-5 level and moderate posterior disc bulge at L5-S1 and L3-4 level."

Aggrieved with the transfer order on the aforesaid grounds, the petitioner has made a representation dated 02.08.2005 before District Education Officer, Dehradun for cancellation of her transfer, however , District Education Officer, Dehradun has not taken any decision on the petitioner's representation. The place, where the petitioner has been posted now, is more than 5 kms from motor road head and for the reasons stated above, it is not possible for the petitioner to walk 5 kms on hill as the petitioner is suffering from backbone disc disorder.

Learned counsel for the petitioner has further submitted that petitioner has yet not been relieved from the present place of posting.

In the circumstances aforesaid, without going into the merit of the case, I think it just and proper to direct the petitioner to produce the certified copy of this order along with fresh representation raising all her grievances before District Education Officer, Dehradun within a period of two weeks from today and the District Education Officer, Dehradun shall take decision on the petitioner's representation within a period of four weeks from the date of production of certified copy of this order. Petitioner shall not be relieved from the present place of posting till the final decision is taken on the petitioner's representation, in case she has not already been relieved.

With this direction the writ petition is finally disposed of.

(M.M. Ghildiyal, J.

September 30,2005
SKSharma